

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JOHN C. MOSKAL**

Claimant

VS.

**UNIFIED SCHOOL DISTRICT NO. 259**

Respondent

Self-Insured

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Docket No. 170,961

**ORDER**

Respondent appeals from an Award dated June 16, 1994 entered by Administrative Law Judge Nelsonna Potts Barnes.

**APPEARANCES**

The claimant appeared by and through his attorney, Frank J. Kamas of Wichita, Kansas. The respondent, a qualified self-insured, appeared by and through its attorney, Robert G. Martin of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

Respondent asks the Appeals Board to review the findings and conclusions of the Administrative Law Judge relating to the nature and extent of claimant's disability. This is the only issue presented for review on appeal.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Appeals Board finds that claimant sustained a twenty-eight percent (28%) permanent partial general disability and the Award of the Administrative Law Judge should be affirmed.

Claimant suffered injury to her shoulder on May 6, 1992 when he was required to alter the course of a food carrier rolling down the tailgate of a truck in order to avoid injury to a child who had walked in the path of the food carrier. The Award by the Administrative Law Judge reviews in detail the medical treatment, findings, recommendations and opinions given by the physicians who treated and evaluated claimant's impairment. Because of the restrictions recommended, respondent declined to return claimant to his work. At the time of the regular hearing, claimant remained unemployed.

The Award by the Administrative Law Judge also includes the opinions expressed by two (2) vocational experts, Mr. Longacre and Mr. Hardin. The Award adjusts their opinions for loss of ability to earn a wage to bring them in line with the actual pre-injury average weekly wage and then gives equal weight to each expert opinion. Finally, the Award gives equal weight to loss of access to the labor market and loss of ability to earn comparable wage as authorized in Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990). The Administrative Law Judge thereby arrives at the twenty-eight percent (28%) work disability.

Respondent argues that the work disability is too high and contends that the Administrative Law Judge failed to take into account a lack of credibility of the claimant. After reviewing the record, the Appeals Board finds no reason to disagree with the implicit assessment of the claimant's credibility by the Administrative Law Judge who had the opportunity to observe claimant testify.

The Appeals Board, therefore, adopts as its own the findings and conclusions entered by the Administrative Law Judge.

**WHEREFORE**, the Appeals Board finds that the decision of the Administrative Law Judge Nelsonna Potts Barnes dated June 16, 1994 should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1995.

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BOARD MEMBER

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BOARD MEMBER

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**BOARD MEMBER**

- c: Frank J. Kamas, Wichita, KS  
Robert G. Martin, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
David Shufelt, Acting Director